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IN THE

**Supreme Court of the United States**

October Term, 1963

No. 167

**SIDNEY J. UNGAR,**

*Appellant,*

*against*

**HONORABLE JOSEPH A. SARAFITE, Judge of the  
Court of General Sessions of the County of New York,**

*Appellee.*

**BRIEF FOR NEW YORK CIVIL LIBERTIES UNION  
AS AMICUS CURIAE**

**NEW YORK CIVIL LIBERTIES UNION,**

*Amicus Curiae,*

156 Fifth Avenue,

New York 10, N. Y.

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*of Counsel.*

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**BRIEF FOR NEW YORK CIVIL LIBERTIES UNION  
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The New York Civil Liberties Union is filing this brief with the consent of the parties because it believes that this case is another instance of procedures in contempt cases which violate the constitutional guarantee of due process."

This Court in *Helvering v. Clifford*, 309 U. S. 331, at 337, used the concept of a "bundle of rights" to determine the legal consequence of a variety of powers, the existence of no one of which alone might lead to the same conclusion. So here, we submit, there is a "bundle of wrongs" which should lead to a determination that due process has been denied, even though that result might not follow from the existence of any one of the matters separately considered.

Here we have the situation of a witness testifying at length for the second time who has been made to feel that he is not trusted either by the parties or the judge. A point comes when he feels he can go no further. He respectfully asks for a brief recess. The outburst for which he has been

held in contempt came when this request was three times denied. Afterwards a further request by the witness for a recess so that he might "contain" himself resulted in the judge's comment that "this is as near malingering [as] could ever be determined from my observation." The lunch recess followed and the witness, having obtained medical assistance, resumed his testimony without further incident. Ten days later the trial ended. Two days after that, on a Thursday, the judge had an order to show cause served in the late afternoon returnable before himself the following Tuesday. Then the witness appeared with an attorney who requested an adjournment to prepare and because he was engaged elsewhere. This was denied and the witness had to proceed without the assistance of counsel. The judge forthwith adjudged the witness in contempt. And this judicial conduct was held by New York's highest court not to have violated the witness' right to due process under the Fourteenth Amendment!

That this series of events should have occurred in a civilized state in this 20th Century is hard to credit. Had it occurred in the federal courts it would most certainly have met the condemnation of this Court under the principles laid down in *Offutt v. United States*, 348 U. S. 11, recently applied in *Panico v. United States*, No. 45 of this Term, decided October 21, 1963. That substantially the same principles should govern state contempt cases is indicated by *In re Murchison*, 349 U. S. 133.

We submit, therefore, that the contempt conviction should be set aside.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION,  
Amicus Curiae.

OSMOND K. FRANKEL,  
of Counsel.